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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 22, 1998

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: CC Docket No. 96-45

ORIGINAL

Dear Ms. Salas:

On July 17, 1997, American Public Communications Council ("APCC") filed a Petition for Partial Reconsideration of the Commission's Universal Service Report and Order. Federal-State Joint Board on Universal Service, CC Docket 96-45, 12 FCC Rcd 8776 (1997). APCC asked the Commission to reconsider its decision to assess Universal Service Fund ("USF") contributions on payphone service providers ("PSPs"). APCC requested that the Commission relieve PSPs from direct USF contributions. Alternatively, APCC requested that the Commission allow PSPs to "net out" USF charges assessed by local exchange carriers ("LECs") and interexchange carriers ("IXCs") by deducting all LEC and IXC charges from the "end user" revenues when calculating the PSP's USF contribution.

As shown in APCC's petition for reconsideration, PSPs currently face a double payment of USF charges. In this ex parte presentation, APCC will demonstrate why it is not appropriate to require PSPs to contribute in any manner, let alone as part of a double payment, to the USF since the very goals of the USF are already being served by PSPs. PSPs should be granted a full exemption from all USF contributions.

A. USF Goals Already Served by PSPs Without Contribution Into USF

Universal service support is intended to ensure that telecommunications service is available to consumers "in all regions of the Nation," including low-income consumers and people living in high-cost areas. 47 U.S.C. § 254(b). These purposes are currently served by payphone services. Attached to APCC's petition for reconsideration are numerous news stories, letters and public record documents attesting to the unique benefits of payphones

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in providing a universally accessible communications link to people "on the move," especially in rural areas, and to those who cannot afford residential service. APCC Petition for Reconsideration, Attachments 1-25. Payphones, more than any other type of telecommunications, by their very nature, provide ubiquitous access to telecommunications service, and provide all members of the public, especially those with no other telecommunications access, with reasonably priced telecommunications services. By providing services to underserved urban and rural areas, and by filling the need for access to telephone service when end users cannot otherwise access their own telephones, PSPs are providing direct and critical support for universal service.

Payphone services especially benefit the low-income consumers and high-cost areas that the USF has been established to support. Inner city communities are often disadvantaged in many ways, especially in their access to telecommunications services. For some of these communities' residents, payphones provide the only link to those outside their neighborhood. Similarly, rural areas often depend on payphones as a critical link for people who must travel long distances to work or other activities. See APCC Petition for Reconsideration, Attachment 2. No other class of service provider is as directly focused on ensuring universal access to telephone service.

In the Payphone Orders, the Commission specifically found that one of the most important purposes served by ensuring adequate compensation of payphone service providers was the universal-service objective of ubiquitous access to dial tone:

> In sum, we believe that the increased access, free of charge to the caller, to emergency calling telecommunications relay service calls for the hearing disabled, and dial tone generally, may be one of the most significant benefits of the compensation approach we adopt in this Report and Order.

Payphone Order, ¶ 19.

In light of the universal service purposes that payphones serve, assessment of the USF against PSPs -- either *directly* or *indirectly* -- contravenes the public interest in access to low-cost telecommunications services and hinders the achievement of the very purposes that the USF is intended to advance.

B. PSPs Forced To Make Double Payment Into USF

PSPs currently are required to contribute directly ***and*** indirectly to the USF. As a direct contribution, PSPs are required to pay USF charges on the coin revenues they collect from end users. PSPs, like local exchange carriers ("LECs") and interexchange carriers

("IXCs"), are currently classified by the FCC as "service providers" and required to contribute directly to the USF.

At the same time, however, PSPs are treated as "end users" by LECs *and* IXCs. As a result, LECs and IXCs apply a "pass-through" charge to PSPs, ostensibly to recover from payphone providers the fees that *these* carriers pay into the USF. PSPs' monthly bills from these carriers currently include USF charges.

Because PSPs are treated as the "end user" by the LECs and IXCs *and* contribute directly to the USF as service providers, PSPs are contributing double to the USF. This approach is inequitable and discriminatory with respect to PSPs and, therefore, is inconsistent with section 254(b)(4) of the Act which requires fairness in USF funding. PSPs are one of the only telecommunications providers similarly situated that are *both* treated as an end user *and* must again contribute based on their own revenues.

APCC's petition for reconsideration urged the Commission to eliminate this double payment by exempting PSPs from direct contributions to the USF.[1] However, a better solution is to exempt PSPs from any form of payment. As explained above, payphones in themselves constitute a form of universal service.[2] Therefore, PSPs are already providing more than their share of contributions to universal service. It is redundant and counter-productive to require additional monetary contributions from PSPs.

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[1] Because PSPs are typically small to average sized companies, the administrative burden for the Commission to collect universal service fees from hundreds of PSPs far outweighs any benefits to the USF. It makes far more sense for the Commission to collect revenues from the significantly larger LECs and long distance companies. The administrative burden, for the companies involved as well as the Commission, of collecting direct or indirect USF payments from PSPs outweighs the revenues collected.

[2] Indeed, PSPs are the only non-dominant telecommunications provider required by law to make a form of universal service available for free. 47 U.S.C. § 276(b)(1)(A). Section 276 of the Telecommunication Act of 1996 already requires PSPs to provide free access to 911. PSPs are also required to make Telecommunications Relay Services ("TRS") calls (a special service for the deaf) available for free. This is in *addition* to making annual direct contributions to the TRS fund, which is separate from the USF and which is paid to other carriers. This widespread availability of payphones to provide improved access to emergency calling services and to the hearing impaired will be severely retarded by imposing additional costs on PSPs.

C. PSPs Cannot Easily Pass On USF Charges

The USF fee combines with EUCL and PICC charges to squeeze PSPs' ability to operate profitably at current rates. In its orders in CC Docket No. 96-128, implementing Section 276 of the Act, 47 U.S.C. § 276, the Commission directed removal of the explicit and implicit subsidies that formerly supported LEC payphone services.[3] Subsequently, local coin rates increased at most payphones, most commonly from 25 cents to 35 cents per local call. Meanwhile, new federally imposed charges and fees have been added on, including the increased end user common line ("EUCL") charge and the new "PICC" charge, placing further pressure on the ability of payphone providers to maintain profitability. While it was clearly appropriate to remove subsidies from payphone service, it is illogical and disserves the purposes of the Act for the Commission to impose a contribution burden on payphone service

If PSPs attempt to follow the example of the LECs and IXCs and preserve profit margins by passing USF costs on in the form of higher payphone rates, it would defeat the very purpose of the USF, which is to provide affordable telecommunications services to all people. Higher payphone rates will diminish the public's access to inexpensive telecommunications service.

Further, to the extent the Commission's current rules prohibit the pass-through of USF charges to intrastate end users, PSPs have no ability to pass on universal service costs. It is impractical for PSPs to recover these costs through increases in end-user interstate rates. End-user interstate revenues are a very small portion of PSPs end user revenues. Any attempt to recover universal service charges would, on the one hand, make the rates so high from those phones as to defeat the very purpose of universal service and, on the other hand, be self defeating since the service would be priced so high it would not be used. Yet if PSPs cannot recover these costs, the net effect will be to decrease the number of payphones, a result clearly at odds with the very purposes of universal service in the first place.

[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order"), Second Report and Order, FCC 97-371, released October 9, 1997 ("Remand Order").

D. PSPs' USF Contribution Burden Is Not Alleviated by Compensable Access Charge Reductions

Recently, the Commission decided to maintain the collection of universal service fees generally at current levels. In support of its decision, the Commission explained that it expected LECs to file tariffs substantially reducing access charges, leading to reductions in interstate long distance rates that offset carriers' pass-through of universal service charges.[4] Whatever the benefits of these access charge reductions for other telephone service consumers, they will not materially reduce the burden of universal service contributions on PSPs and payphone service consumers.

PSPs have not, and will not receive benefits from access charge reductions that even begin to offset the impact of universal service payments. The vast majority of calls at payphones are local and intraLATA coin calls. Thus, the bulk of PSPs' revenue is local coin "end user" revenue that is subject to a contribution for the schools and libraries fund. Similarly, the bulk of PSPs' telecommunications costs are attributable to monthly line charges – including EUCL charges – and/or local usage charges. By contrast, interstate coin traffic comprises a very small percentage of calls at most payphones. Thus, interexchange carriers' usage-sensitive charges for interstate service make up a small percentage of PSPs' telecommunications costs.

Because the school and library fund contribution is based on total end user revenue, PSPs must pay a percentage of all their coin revenue as their contribution to this fund. Access charge reductions, by contrast, affect only the relatively minuscule portion of PSPs' telecommunications costs that represent usage charges for interstate long distance service. Thus, even assuming that long distance carriers pass on to PSPs and other subscribers the full amount of access reductions, the average payphone service provider will not realize access charge savings that even remotely approach what they pay for interstate service.

Indeed, the access charge changes implemented to date have hurt rather than helped PSPs. Many PSPs have experienced increases in EUCL charges, and virtually all have incurred some form of "PICC" charge, either as a pass-through assessed by the long distance carrier or as a direct "no-PIC" charge assessed by the LEC. Because the increased EUCL charge and the PICC are flat monthly charges, their impact falls particularly heavily on PSPs, who have relatively little interstate coin traffic, and is not offset by commensurate access charge savings.

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[4] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order , CC Docket No. 96-45, FCC 98-120, released June 22, 1998, ¶ 20.

CONCLUSION

In summary, requiring PSPs to contribute to the USF either directly, through payment of fees, or indirectly, by allowing LECs and IXCs to assess "pass-through" charges on PSPs, hinders payphone operators' ability to effectively provide their essential services to the public. To ensure that payphone operators remain able to fulfill these important public needs, no USF contribution (either direct or indirect) should be required of payphone operators.

Therefore, APCC urges the Commission to grant APCC's petition for reconsideration and make clear that PSPs are exempted from contributing directly or indirectly into the USF. Certainly the "double-contribution" must be eliminated, either by exempting PSPs from contributing directly to the USF or by allowing PSPs to deduct payments made to carriers from the PSP's end user revenues when the PSP calculates its USF contribution.

Please contact the undersigned if there are any questions regarding this matter.

Sincerely,

Albert Kramer

Albert H. Kramer
Robert F. Aldrich

AHK/nw
cc: Lisa Gelb
Lisa Boehley